# Exhibit A

# **McClean Declaration**

# IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

In re:		Chapter 11
ATHENEX, INC., et al.,		Case No. 23-90295 (DRJ)
	Debtors. <sup>1</sup>	(Jointly Administered)

### DECLARATION OF ALEXANDER R. MCCLEAN IN SUPPORT OF THE DEBTORS' APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF HARTER SECREST & EMERY LLP AS SPECIAL COUNSEL FOR THE DEBTORS

I, Alexander R. McClean, declare under penalty of perjury pursuant to 28 U.S.C. § 1746, and pursuant to Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2014-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "Bankruptcy Local Rules"), that the following is true and correct:

- 1. I am a partner with the law firm of Harter Secrest & Emery LLP (the "Firm" or "HSE"), with an address of 1600 Bausch & Lomb Place, Rochester, New York 14604, and elsewhere in the State of New York. I am duly admitted to practice law in the State of New York.
- 2. I am authorized to submit this declaration (the "<u>Declaration</u>") in support of the Debtors' Application for Entry of an Order Authorizing the Employment and Retention of Harter Secrest & Emery LLP as Special Counsel for the Debtors Effective as of the Petition Date (the

A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <a href="https://dm.epiq11.com/athenex">https://dm.epiq11.com/athenex</a>. The location of Athenex, Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

"Application").<sup>2</sup> As set forth in the Application, the Firm is proposed special counsel for the above-captioned debtors and debtors in possession (collectively, the "Debtors").

- 3. The Firm is experienced in the areas of mergers and acquisitions, labor, intellectual property, securities, corporate law, and corporate governance matters governance and has represented the Debtors in connection such matters. Subject to further order of this Court, the Firm proposes to continue to render these services to the Debtors as special counsel in these chapter 11 cases.
- 4. The Firm commenced rendering prepetition services to and on behalf of the Debtors on or about April 18, 2018.
- 5. In connection with the Debtors' retention of professionals, the Firm received payments from the Debtors during the year prior to the Petition Date in the aggregate amount of \$725,476.00 for services rendered and \$17,812.33 for reimbursement of disbursements incurred in connection with the Firm's representation of the Debtors. As of the Petition Date, the Firm has unpaid amounts to totaling approximately \$202,487.12 for services rendered and \$4,415.92 for disbursements incurred. There are no arrangements between the Firm and any other entity for the sharing of compensation received or to be received in connection with the Debtors' chapter 11 cases, except insofar as such compensation may be shared among the partners, of counsel, and associates of the Firm.
- 6. Subject to the approval of the Court under applicable provisions of the Bankruptcy Code, the Debtors propose to pay the Firm its customary hourly rates in effect from time to time and to reimburse the Firm for its expenses according to its customary reimbursement policies. The

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A capitalized term used but not defined herein shall have the meaning ascribed to it in the Application.

attorneys currently expected to be principally responsible for this matter, and their respective current hourly rates for calendar year 2023, are as follows: (a) Alexander McClean (Partner, \$500.00), (b) Philip Delmont (Partner, \$565.00), (c) Amy Hemenway (Partner, \$520.00), (d) Anne Downey (Partner, \$400.00), (e) Nicholas Gatto (Senior Counsel, \$485.00), (f) Margaret Rhoda (Senior Associate, \$365.00), and (g) Matthew Eldred (Senior Associate, \$345.00). The current standard hourly rates of other Firm professionals who may assist with these chapter 11 cases from time to time are:

PROFESSIONAL	RATE
Partners	\$415 to \$640
Counsel	\$310 to \$570
Associates	\$275 to \$450
Paralegals	\$175 to \$265

- 7. These rates are subject to generally applicable increases as put into effect from time to time by the Firm. The Firm will provide reasonable notice to the Debtors and the U.S. Trustee of any increases of the Firm's hourly rates, as set forth in the Order approving the Application.
- 8. The rates charged by the Firm are set at a level designed fairly to compensate the Firm for the work of its attorneys and paraprofessionals, to cover fixed and routine overhead expenses, and are subject to periodic adjustments necessitated by market and other conditions. Beyond the rates listed above, it is the Firm's policy to charge for all other expenses incurred in connection with the clients' cases. These expenses include, among other things, conference call charges, mail and express mail charges, special or hand delivery charges, document retrieval charges, photocopying charges, charges for mailing supplies (including, without limitation, envelopes and labels) provided by the Firm to outside copying services for use in mass mailings, travel expenses, expenses for "working meals," computerized research, and transcription costs, as

well as non-ordinary overhead expenses such as secretarial and other overtime. The Firm will charge the Debtors for these expenses in a manner and at rates consistent with those charged to other Firm clients.

- 9. The Firm categorizes its billing into subject matter categories in representations of this kind. The Firm understands that its compensation in these chapter 11 cases is subject to approval of this Court, in accordance with sections 327(e) and 330(a) of the Bankruptcy Code, Bankruptcy Rule 2016, and any further Orders of the Court as an expense of administration pursuant to sections 507(b) and 503(b) of the Bankruptcy Code. The Firm may seek interim compensation during these chapter 11 cases as permitted by section 331 of the Bankruptcy Code or pursuant to further orders of this Court.
- 10. The Firm has made the following investigation of its connections prior to submitting this Declaration. The Firm has undertaken a full and thorough review of its computer database, which contains the names of clients and other parties in interest in particular matters. The Firm requires all of its professionals, before accepting the representation of a new client, or the representation of an existing client in a new matter, to perform a conflicts check through the Firm's database and to enter conflict information regarding new clients or new matters into that database. Thus, a review of said computerized database should reveal any and all actual or potential conflicts of interest with respect to any given representation.
- 11. The Firm has run the following parties, among others, through its conflict system (the "<u>Potential Parties-in-Interest</u>"): (i) the Debtors, (ii) non-Debtor affiliates, (iii) current and former directors and officers of the Debtors, (iv) secured creditors, (v) lenders, (vi) ordinary course professionals, (vii) the Debtors' and other known parties' professionals, (viii) the Debtors' top 50 unsecured creditors, (ix) litigation parties; and (x) Judges and the United States Trustee for the

Southern District of Texas, Houston Division and persons employed in the office of the United States Trustee, (xi) and other parties. The Firm's investigation has not revealed any actual or potential conflicts of interest with respect to the Firm's proposed representation of the Debtors. A list of the Potential Parties-in-Interest is attached hereto as **Schedule 1**.

- 12. Based on the Firm's ongoing conflict check as described above, on <u>Schedule 2</u> attached hereto the Firm discloses certain connections with the Potential Parties-in-Interest all of which are unrelated to these chapter 11 cases. The Firm is presently not aware of any adverse interest or other connection with the Debtors, their creditors, the U.S. Trustee, or any party in interest herein in the matters upon which the Firm is to be retained. Upon further and continuing review of lists of all creditors and interested parties, the Firm will make any further disclosures as may be appropriate.
- 13. The Debtors intend to retain various professionals during the pendency of these chapter 11 cases, including: (a) Pachulski Stang Ziehl & Jones LLP, (b) Cassel Salpeter & Co., (c) MERU, LLC, and (d) Epiq Corporate Restructuring. The Firm has previously worked with, and will continue to work with, these referenced professionals, and others, on various representations, at times representing the same parties and at other times representing parties with similar interests or parties with adverse interests.
- 14. The Firm and certain of its partners, of counsel, and associates may have in the past represented, and may currently represent and likely in the future will represent, creditors of the Debtors in connection with matters unrelated to the Debtors and these chapter 11 cases. Additionally, the Firm represented, represents, and in the future will likely represent, in matters wholly unrelated to these chapter 11 cases, potential parties in interest that may be interested in acquiring all or a portion of the Debtors' assets in these chapter 11 cases. For the avoidance of

doubt, the Firm does not and will not represent any such parties in interest in these chapter 11 cases.

- 15. Given the large number of Potential Parties in Interest in these chapter 11 cases and because the information on **Schedule 1** may change during the pendency of these chapter 11 cases, the Firm is not able conclusively to identify all relationships or potential relationships with all creditors or other parties in interest in these chapter 11 cases. If any additional relationships are discovered, the Firm will promptly file a supplemental declaration as required by Bankruptcy Rule 2014(a). Additionally, if any new relevant facts or relationships arise, the Firm will use reasonable efforts to identify such developments and will promptly file a supplemental declaration as required by Bankruptcy Rule 2014(a).
- 16. Neither the Firm, nor any associate, of counsel, or partner of the Firm, has an interest adverse to the interest of the Debtors or their estates with respect to the matters on which the Firm is to be employed.
- 17. To the best of my knowledge, except as disclosed herein, no attorney at the Firm has any connection with the Debtors, creditors, any other party in interest, their respective attorneys and accountants, the U.S. Trustee, any person employed in the U.S. Trustee's Office, or any insider of the Debtors except as described above.
- 18. The Firm does not employ any person that is related to a judge of this Court or the U.S. Trustee for Region 7.
- 19. To the best of my knowledge, after conducting or supervising the investigation described above, I believe that the Firm is eligible for employment by the Debtors pursuant to section 327(e) of the Bankruptcy Code.

20. The Firm provides the following responses to the questions set forth in Part D of the Appendix B Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed under United States Code by Attorneys in Larger Chapter 11 Cases (the "Revised UST Guidelines"):

Question:	Answer:	Further explanation:
Did you agree to any variations from, or alternatives to, your standard or customary billing arrangements for this engagement?	No.	N/A
Do any of the professionals included in this engagement vary their rate based on the geographic location of the bankruptcy case?	No.	N/A
If you represented the client in the 12 months prepetition, disclose your billing rates and material financial terms for the prepetition engagement, including any adjustments during the 12 months prepetition. If your billing rates and material financial terms have changed postpetition, explain the difference and reasons for the difference.	The material financial terms for the prepetition engagement remained the same as the engagement was hourly-based.  The billing rates and material financial terms for the postpetition period remain the same as the prepetition period.  The standard hourly rates of the Firm are subject to periodic adjustment in accordance with the Firm's practice.	None.
Has your client approved your respective budget and staffing plan, and, if so, for what budget period?	The Debtors and the Firm have discussed an anticipated budget for these chapter 11 cases.	None.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 8, 2023

/s/ Alexander R. McClean
Alexander R. McClean

# **Potential Parties in Interest**

Parties in Interest

Debtors, dbas & Affiliates

Athenex API Limited

Athenex API Limited

Athenex Belgium

Athenex Biomedical International Holdings

Limited

Athenex Cidal Argentina S.A.U.

Athenex Cidal Chile SpA

Athenex Cidal Columbia S.A.S.

Athenex Cidal Costa Rica S.A.

Athenex Cidal Ecuador ATHENEXCUA S.A.

Athenex Cidal Guatemala S.A.

ATHENEX CIDAL HOLDINGS I, S.A.

ATHENEX CIDAL HOLDINGS II, S.A.

ATHENEX CIDAL PANAMA, S.A.

Athenex Cidal Peru, S.A.C.

Athenex Euro Limited

Athenex HK Innovative Limited

Athenex Manufacturing China Limited

Athenex Pharma Solutions

Athenex Pharma Solutions, LLC

Athenex Pharmaceutical Division, LLC

Athenex Pharmaceutical Division, LLC

Athenex Pharmaceuticals (China) Limited

Athenex Pharmaceuticals (Chongqing) Limited

Athenex Pharmaceuticals (Hong Kong) Limited

Athenex Pharmaceuticals Co., Ltd.

Athenex Pharmaceuticals International Holdings

Limited

Athenex Pharmaceuticals LLC

Athenex R&D LLC

Athenex Therapeutics Limited

Athenex Therapeutics Limited

Athenex, Inc.

Athenex, Inc.

AtheSino Holdings Limited

Atis Science and Technology Company Limited

ATNX SPV, LLC

Axis Therapeutics Limited

Bioksy Investments Ltd.

Cell Medica, Inc.

Chongqing MJ Medical Devices Co., Ltd.

Chongqing MJ Medical Sciences Co., Ltd.

Chongqing Sintaho Pharmaceutical Co., Ltd.

Chongqing Taihao Pharmaceutical Co., Ltd.

Comprehensive Drug Enterprises Limited

**Excel Bloom Limited** 

Kinex Pharmaceuticals Inc.

Kinex Pharmaceuticals LLC

Kinex Therapeutics (HK) Limited

Kuur Therapeutics Limited

KUUR Therapeutics, Inc.

Maxinase Life Sciences Limited

Meridian East Limited

MJ Medical Gel Systems Limited

Nuwagen Limited\*

Peterson Athenex Pharmaceuticals, LLC

Peterson Athenex Pharmaceuticals, LLC

Polymed Therapeutics, Inc.

Renascence Therapeutics Limited

#### **Directors & Officers (current and former)**

Daniel Lang

Dr. Darrell P. Cohen

Dr. David L. Cutler

Dr. Jinn Wu

Dr. John Moore Vierling

Dr. Robert J. Spiegel

Dr. Rudolf Min-Fun Kwan

Flint Besecker

Jeff Yordon

Joe Annoni

John Romano

Johnson Y.N. Lau, MBBS, M.D., FRCP

Jordan Kanfer

Kevin S. Boyle, Sr.

Kwan Hung Tsang

Lorin Drake

Manson Fok

Michael Smolinski

Stephanie Davis

Steve Adams

Teresa Bair

Timothy Cook

William Zuo, President

Xiojing Wu

#### **Secured Parties:**

ATNX SPV, LLC

Corporation Service Company

LCA Bank Corporation

Oaktree Capital Management, L.P.

Oaktree Fund Administration, LLC

Sagard Healthcare Partners

Sagard Healthcare Royalty Partners LP

U.S. Bank Equipment Finance

#### **Equity Holders**

Altamont Pharmaceutical Holdings

Alyeska Group

Parties in Interest

**Armistice Capital** 

Avalon Biomedical Management, LTD

Balyasny Asset Management BlackRock Fund Advisors Citadel Advisors, LLC Credit Suisse International

DWS Investment Management Americas, Inc.

Empery Asset Management, L.P. Endurant Capital Management

Ergoteles Capital

Geode Capital Management, LLC

Goldman Sachs & Co., LLC GSA Capital Partners, LLP

Heights Capital Management, Inc.

HighTower Advisors, LLC Intracoastal Capital LLC

IP Group PLC

Johnson Y.N. Lau, MBBS, M.D., FRCP

Kingsbrook Partners LP Millennium Management, LLC

Morgan Stanley & Company, LLC

National Asset Management, Inc.

Perceptive Advisors, LLC Perceptive Life Sciences

Renaissance Technologies, LLC

**RS** Investments

Schonfeld Strategic Group Shn Financial Investments Stanford Ventures Inc.

State Street Global Advisors (SSgA)

Susquehanna Financial Group, LLLP (Broker)

The Eleven Fund

The Vanguard Group, Inc.

UBS Financial Services, Inc. (Investment

Advisor)

Vanguard Group
Walleye Capital LLC
Xantium Partners L.P.

#### Licensors

Almirall, S.A.

Aqua Pharmaceuticals LLC Avalon Hepapoc Limited Avalon Polyton (HK) Limited Axis Therapeutics Limited

CANDA NK-2 LLC

Chongqing Taihao Pharmaceutical Co., Ltd.

Galactose Meter and Strip Gland Pharma Limited

Guangzhou Xiangxue Pharmaceutical Co., Ltd.

Hanmi Pharmeceutical Ltd.

Nang-Kuang Phamaceutical Co., LTD.

Pegtomarginase

PharmaEssentia Corp.

SunGen Pharma LLC

Xiangxue Life Sciences Ltd.

Xiangxue New Drug Discovery and Development Company Limited

ZenRx Limited

#### **Joint Venture Parties**

Peterson Athenex Pharmaceuticals, LLC

Peterson Pharmaceutical

#### **Other Contract Parties**

20 Commerce Drive Associates, LLC

Almirall LLC Almirall S.A.

Alter Pharma NV (on behalf of Generic Pharma

International Limited and Milla

Pharmaceuticals, Inc.)

Amphastar Pharmaceuticals, Inc.

Apple, Inc.

Ardington Archives

Arthur Group LLC

Avir Pharma Inc.

Baylor College of Medicine

BE Pharmaceuticals AG

Beloteca, Inc.

BioAgilytix Labs, LLC

Biopas

Boyds Consultants Ltd Brammer Bio, LLC

Diaminer Dio, LLC

C. S. Kimeric, Inc

Charles River Laboratories, Inc.

Chia Tai Tianqing Pharmaceutical Group Co., Ltd.

Chongqing Maliu Riverside Development and Investment Co., Ltd.,

Chongqing Sintaho Pharmaceutical Co., Ltd. Chongqing Taihao Pharmaceutical Co., Ltd.

ComDoc Inc

Cyrogene, a Cryoport Company Dark Horse Consulting Group, Inc. Dohmen Life Science Services, LLC

Eli Lilly and Company

Elsevier B.V.

ESBATech, a Novartis Company LLC

Essiay Solutions Ltd.

Ever Valinject

Parties in Interest

EVERSANA Life Science Services, LLC (f/k/a

Dohmen Life Science Services, LLC)
Fort Schulver Management Corporation

Fred Hutchinson Cancer Center GEM Programming Solutions Genscript Probio USA Inc. Gland Pharma Limited GlaxoSmithKline, LLC Global Pharmatech

Global Pharmatech LLC

Global Pharmatech Private Limited Greater Glasgow Health Board

Group V Real Estate, Inc.

Guangzhou Xiangxue Pharmaceutical Co., Ltd. Hainan Shuangcheng Pharmaceuticals Inc. LTD

Hengrui

Heritage Pharmaceuticals Inc. dba Avet

Pharmaceuticals Inc. Hovione Limited ImClone LLC

Imuna Pharm for IV Solutions Products

Indena S.p.A. Indena S.p.A.

Ingenus Pharmaceuticals, LLC Ingersoll-Rand Industrial U.S., Inc.

Iris Global, LLC

Iron Mountain (Switzerland) Ltd

Iron Mountain Information Management, LLC Istituto Biochimico Italiano Giovanni Lorenzini S.p.A.

Jiangsu Hansoh Pharmaceutical Group Co., Ltd

Lorenz Archiv-Systeme GmbH Lorenz International LLC MAIA Pharmaceuticals MailFinance, Inc.

Maiva Pharma Private Limited

MasterControl, Inc. MegaPharm Ltd

Modern Disposal Services

MSD International Business GmbH

MSD International GmbH

MW Encap Ltd

MW Encap Ltd. (Lonza)

Newcastle Upon Tyne Hospitals NHS

Foundation Trust Nuwagen Limited OncoGenerix USA, Inc.

OncoMed Specialty, LLC dba Onco360 Oregon Health & Science University

Patheon Pharmaceuticals Inc.

PharmaDirections, Inc.

Pharmaessentia Corp

Pharmascience Inc.

PM Communications LLC

Praxgen Pharmaceuticals LLC

ProductLife Limited

Professor Andrew M Wardley

Q Squared Solutions LLC

Qilu Pharmaceutical Co., LTD.

Quantum Leap Health Care Collaborative Sciecure for Compounded Pharmaceutical

Products

SciLucent, Inc.

Sentry BioPharma Services, Inc.

Seqirus Pty Ltd Shred-it USA LLC

SouthworkMilton Inc. d/b/a Milton CAT

Spectrum Chemicals Manufacturing Corporation

**Speed Global Services** 

Summit Medical Writing Group, Inc. (and Mark

Sobnosky)

Telerx Marketing, Inc.

The Christie NHS Foundation Trust

The Steely Group, LLC

The U.S. Department of Health and Human Services, as represented by National Cancer Institute an Institute or Center of the NIH

The University of North Carolina at Chapel Hill The University of Texas Health Science Center

at San Antonio TympoBio Inc.

University of California, on behalf of its San

Francisco Campus Up Pharma, S.A. de C.V. USV Private Limited

Woodfield Preserve Property, L.L.C. Z.A.S. Zentral Archiv Service GmbH

ZenRx Limited

#### **Professionals**

Cassel, Salpeter & Co.
Deloitte & Touche LLP
Epiq Corporate Restructuring
Harter Secrest & Emery LLP

MERU, LLC

Pachulski Stang Ziehl & Jones LLP

Parties in Interest

#### **Ordinary Course Professionals**

Arnold & Porter LLP

BakerHostetler

Barclay Damon LLP

Fish IP Law LLP Schroder, Joseph &

Associates, LLP

Harris Beach PLLC

Hyman, Phelps & McNamara, P.C

Mendoza, Arias, Valle & Castillo

ParkerPoe Cooley LLP

Quarles & Brady LLP

#### **Top Unsecured Creditors**

ACS Dobfar

Aronld & Porter

Avet Pharmaceuticals Inc.

Baylor College of medicine

BioAgilytix Labs LLC

Certara USA, INc.

Chongqing Sintaho/Taihao

Chongqing Taiho Pharm

Commerce & Finance Law

Cooley LLP

Deloitte & Touche LLP

Eagle Pharmaceuticals Inc.

**EVERSANA Life Science Service** 

Fort Schulyer Management

Generic Pharma International

GenSCript Probio USA Inc.

Gland Pharma Limited

Harter Secrest & Emery LLP

**ICON** 

Indena SPA

Ingenus Pharmaceuticals, LLC

Karmanos Cancer Center

Mayo Clinic - Rochester

McKesson Medical Surgical

Nang Kuang Pharm. Co. Ltd.

National Institutes of Health

NIH

Pace Analytical Life Sci

Praxgen Pharmaceuticals, LLC

O2 Solutions

OAD INc.

Sullivan & Cromwell LLP

Veolia Environmental Service

#### Banks

Bank of America

Key Bank

UBS

US BANK

#### **Insurance Companies/Brokers**

AIG

**Ascot Insurance Company** 

AXA XL - Professional Insurance

Berkshire Hathaway Specialty Insurance

Chubb Group of Insurance Companies

**Evanston Insurance Company** 

Everest Indemnity Insurance Company

Great Northern Insurance Company

Federal Insurance Company

Houston Casualty Company

Markel Service, Incorporated

Newline - MCI

**RSUI** 

Sompo International Insurance

Tokio Marine HCC - D&O Group

Travelers Casualty and Surety Company of

America

Travelers Casualty and Surety Company of

America

#### **Litigation Counterparties**

Exyte US Inc.

#### Landlords

Commerce Drive LLC

Fort Schuyler Management

Group V Real Estate, Inc.

University at Buffalo

Woodfield Reserve Property

#### **Utility Providers**

**Charter Communications** 

ComEd

Level 3 Communications

National Fuel

National Grid

Ring Central, Inc.

Spectrum

Transwave

# Judges & the Office of the US Trustee for the Southern District of Texas

Chief Judge Eduardo V. Rodriguez

Judge Christopher M. Lopez

Judge David R. Jones

Judge Jeffrey P. Norman

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Schedule 1 Parties in Interest

Judge Marvin Isgur Alethea Caluza Alicia Barcomb Brian Henault Christopher R. Travis Christy Simmons Clarissa Waxton Glenn Otto Gwen Smith Ha Nguyen Hector Duran
Ivette Gerhard
Jana Whitworth
Jayson B. Ruff
Linda Motton
Luci Johnson-Davis
Millie Aponte Sall
Samantha Chilton
Stephen Statham
Yasmine Rivera

# **Engagements with Potential Parties in Interest**

All disclosures below are for matters unrelated to the Debtors, their affiliates, or the Debtors' chapter 11 cases. For all disclosures concerning relationships that generate revenue, such revenue is less than 1% of the annual revenue of HSE. A "professional" relationship means one where HSE was working as a professional alongside or against the other noted professional. A "business" relationship means one where HSE was engaged by the person or entity noted.

Individual / Entity	Relationship to Debtors	Status	Relationship to Harter Secrest & Emery LLP
Bank of America, N.A.	Bank	Open matters unrelated to Debtors	Business
KeyBank National Association	Bank	Open matters unrelated to Debtors	Business
Modern Disposal Services, Inc.	Contract Party	Open matters unrelated to Debtors	Business
Sompo International	Insurance Company	Open matters unrelated to Debtors	Business